



INTERIOR BOARD OF INDIAN APPEALS

Kenneth S. Smitala v. Midwest Regional Director, Bureau of Indian Affairs

37 IBIA 65 (12/07/2001)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

KENNETH S. SMITALA,
Appellant

v.

MIDWEST REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Affirming Decision
:
:
:
: Docket No. IBIA 01-181-A
:
:
: December 7, 2001

Appellant Kenneth S. Smitala seeks review of a July 12, 2001, and/or August 21, 2001, decision issued by the Midwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), assessing Appellant for timber trespass and theft from the Menominee Indian Reservation. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

The administrative record shows that Appellant admitted to cutting and removing two basswood trees from the Reservation near his home. The trespass and theft occurred June 11, 1998. By letter dated July 12, 2001, BIA notified Appellant that he was being assessed a total of \$1,886.67 for the trespass and theft. BIA indicated that, based on an appraisal, the value of the timber cut was \$342.36. It stated that Appellant was being assessed treble damages in the amount of \$1,027.08 as authorized by the National Indian Forest Resources Management Act, 25 U.S.C. §§ 3101-3120. In addition, BIA assessed interest in the amount of \$172.45, and investigation costs of \$1,029.50. BIA subtracted \$342.36, the value of the recovered lumber, from the total assessment. Appellant was informed that interest charges would continue to accrue until the assessment was paid. BIA informed Appellant of his right to appeal its decision to the Board.

On August 21, 2001, BIA sent a second letter to Appellant, detailing the same charges, but stating that the interest then amounted to \$180.21. BIA again gave Appellant information concerning his right to appeal to the Board.

Appellant filed an appeal dated August 29, 2001. His notice of appeal states in relevant part:

In all respects, this matter is being appealed. At no time did [Appellant] cut timber on Indian owned lands. Furthermore, no proof was entered or substantiated in any way, shape or form that justifies the claim set forth in the letter. All of the

amounts of damages set forth in the letter are exorbitant, unreasonable and violate the constitutional rights of this fee property owner. This matter consists of additional discrimination, harassment and general intentional infliction of emotional distress upon [Appellant] and his family arising out of this ownership of property free and clear of Indian jurisdiction.

Although the Board advised Appellant of his right to file an opening brief, Appellant did not file anything further.

As the Board has repeatedly stated, an appellant bears the burden of proving the error in the decision from which he is appealing. See, e.g., Town of Ignacio, Colorado v. Albuquerque Area Director, 34 IBIA 37, 39 (1999), and cases cited there; Ewing v. Acting Billings Area Director, 29 IBIA 264, 266 (1996), and cases cited there. On appeal, Appellant raises only unsupported assertions. Despite Appellant's statement in his notice of appeal that he did not cut timber on the Reservation, the administrative record clearly shows that he admitted doing so. Damages were determined in accordance with the regulations in 25 C.F.R. Part 163. Appellant has not even attempted to show how his constitutional rights were violated or how he has been the object of discrimination in regard to this assessment. Under these circumstances, the Board finds that Appellant has failed to carry his burden of proving error in the Regional Director's decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms both the Regional Director's July 12, 2001, and August 21, 2001, decisions.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge